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Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions

Report of the Secretary-General

Summary

The present report has been submitted in compliance with paragraph 16 of General Assembly resolution 63/127. It highlights arrangements in the Secretariat related to assistance to third States affected by the application of sanctions; the operational changes that have occurred in the light of the shift in focus in the Security Council and its sanctions committees towards targeted sanctions; and recent developments concerning the activities of the Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions.

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I. Introduction

1. In its resolution 63/127, the General Assembly requested the Secretary-General to submit a report to the Assembly at its sixty-fourth session on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions. The present report has been prepared in compliance with that request.

II. Measures for further improvement of the procedures and working methods of the Security Council and its sanctions committees related to assistance to third States affected by the application of sanctions

2. As noted in previous reports of the Secretary-General (A/62/206 and Corr.1 and A/63/224), the Chairman of the Security Council Informal Working Group on General Issues of Sanctions transmitted the report of the Working Group to the Security Council (see S/2006/997, annex). Several of the recommendations and best practices set out in that report related to improved sanctions design and monitoring; however, the report did not contain any recommendations that explicitly referred to ways to assist third States affected by the unintended impact of sanctions. By its resolution 1732 (2006), the Council decided that the Working Group had fulfilled its mandate as contained in document S/2005/841, and took note with interest of the best practices and methods set out in the report of the Working Group and requested its subsidiary bodies to take note of them as well.

3. During the period under review, and in keeping with the shift of the Security Council from comprehensive economic sanctions to targeted sanctions, there were no pre-assessment reports or ongoing assessment reports concerning the likely or actual unintended impact of sanctions on third States.

4. In the period under review, and again in keeping with the shift of the Security Council from comprehensive economic sanctions to targeted sanctions, no sanctions committees were approached by Member States with regard to special economic problems arising from the implementation of sanctions.

5. In nearly every case in which the Security Council has decided that States shall freeze the assets owned or controlled by designated individuals and entities, the Council has also adopted exceptions by which States can signal to the relevant sanctions committee their intention to authorize access to frozen funds for a variety of basic and extraordinary expenses.[1] Such expenses can include tax payments, insurance premiums and public utility charges; reasonable professional fees and reimbursement of expenses associated with the provision of legal services; and fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources.

6. Furthermore, in paragraph 15 of its resolution 1737 (2006), the Security Council decided that the assets freeze imposed under the same resolution would not prevent a designated person or entity from making payment due under a contract

[1] See Security Council resolutions 1452 (2002), 1532 (2004), 1572 (2004), 1591 (2005), 1596 (2005), 1636 (2005), 1718 (2006) and 1737 (2006).

entered into prior to the listing of such a person or entity, provided that the conditions set out in subparagraphs 15 (a) and (b) had been met, and after notification by the relevant States to the Committee established pursuant to resolution 1737 (2006) of the intention to make or receive such payments or to authorize, where appropriate, the unfreezing of funds, other financial assets or economic resources for that purpose, 10 working days prior to such authorization.

7. Through his 90-day reports to the Security Council, prepared in accordance with paragraph 18 (h) of resolution 1737 (2006), the Chairman of the Committee informed the Council of a total of 35 notifications submitted pursuant to paragraph 15, which did not require a Committee decision, of the receipt of payment or the unfreezing of assets in connection with contracts entered into prior to the listing of certain entities.[2] Thus, the provisions contained in paragraph 15 of resolution 1737 (2006), as well as the exceptions to the assets freeze for basic and extraordinary expenses,[1] can help to mitigate economic burdens arising from the implementation of Council assets freezes.

III. Recent developments related to the role of the General Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions

8. Pursuant to paragraph 7 of General Assembly resolution 59/45, the Assembly and the Economic and Social Council have continued to play their respective roles in the area of assistance to third States affected by the application of sanctions.[3]

A. General Assembly

9. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization met from 17 to 25 February 2009. Chapter III.B of the report of the Special Committee (see A/64/33) contains a summary of the discussions on the question of the implementation of the Charter provisions related to assistance to third States affected by sanctions.

B. Economic and Social Council

10. Pursuant to its decision 2000/32, the Economic and Social Council decided to include, in the general segment of the agenda of its substantive session of 2009, sub-item 13 (j), entitled "Assistance to third States affected by the application of sanctions". No advance documentation was requested. The Council considered the matter on 29 July 2009 but took no action under that sub-item.

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[2] See S/PV.5702, 5743, 5807, 5853, 5909, 5973 and 6142.

[3] During the period under review, there were no developments in the Committee for Programme and Coordination in the area of assistance to third States affected by the application of sanctions.

IV. Arrangements in the Secretariat related to assistance to third States affected by the application of sanctions

11. In accordance with the relevant resolutions of the General Assembly,[4] the competent units within the Secretariat have maintained their capacity to compile and evaluate information pertaining to any special economic problems in third States arising from the application of sanctions and to evaluate any appeals to the Security Council made by such affected third states under the provisions of Article 50 of the Charter of the United Nations.

12. The goal of such monitoring and evaluation exercises is to develop and strengthen capacity within the Department of Economic and Social Affairs to refine and improve the modalities, technical procedures and guidelines for the coordination of technical assistance to affected third States. However, the shift from comprehensive economic sanctions to targeted sanctions in recent years has reduced the occurrence of unintended, adverse economic problems in third States. Consequently, as noted in recent reports of the Secretary-General on this issue (A/62/206 and Corr.1 and A/63/224), and as indicated in paragraph 4 above, no third State has notified the Security Council of special economic problems that have resulted from application of sanctions under Article 50 provisions since 2003.

13. The shift to targeted sanctions has also brought significant changes in the design, implementation, monitoring and assessment of the impact of sanctions. Some of the technical methods used to review and assess special economic problems of third States affected by sanctions were discussed in detail in the report of the Secretary-General contained in document A/62/206 and Corr.1 (paras. 14-19). Recent reviews have also focused on the impact of sanctions on a broader range of economic, social and humanitarian outcomes in targeted countries. This new approach is reflected, for example, in the report of the Working Group (S/2006/997, annex), which recommended that "possible humanitarian, political, and economic impacts" of sanctions should be taken into account in their design and implementation (sect. II.A, para. 3 (a)).

14. In a similar development, the Office for the Coordination of Humanitarian Affairs published a handbook[5] and field guidelines[6] intended to be used to assess the humanitarian and related economic and social consequences of sanctions. The handbook is expected to contribute to the refinement of the methodology to develop, implement and assess the impact of targeted sanctions.

15. The Department of Economic and Social Affairs will continue to explore opportunities and collaborative work with other Secretariat units in order to incorporate the experience and expertise gained thus far in the application of targeted sanctions. This experience will be used to refine and improve existing methods used to monitor the impact of sanctions on third States. The ultimate

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[4] See resolutions 50/51, 51/208, 52/162, 53/107, 54/107, 55/157, 56/87, 57/25, 58/80, 59/45, 60/23, 61/38, 62/69 and 63/127.

[5] Office for the Coordination of Humanitarian Affairs and the Inter-Agency Standing Committee, *Sanctions Assessment Handbook: Assessing the Humanitarian Implications of Sanctions* (New York, October 2004).

[6] Office for the Coordination of Humanitarian Affairs and the Inter-Agency Standing Committee, *Field Guidelines for Assessing the Humanitarian Implications of Sanctions* (New York, October 2004).

objective is the development of practical solutions to special economic problems that may occur as a result of the application of sanctions along guidelines specified by the relevant General Assembly resolutions cited in paragraph 11 above. In the absence of Article 50 appeals to the Security Council, however, little progress has been made since 2003 on the refinement and application of existing methodologies based on this collaborative work.